Supreme Court, U.S.
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No. 98-2049

In the

Supreme Court of the United States

October Term, 1998

RALPH L. DOUROS and MARGARET D. DOUROS,

Petitioner,

v.

SHARON SAVINGS BANK, formerly SHARON SAVINGS and LOAN ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This petition seeks review of the Pennsylvania Court's Order denying Mr. Douros' Petition For Allowance of Appeal.

A. The Pennsylvania Supreme Court did not abuse its discretion when it denied Petitioner's Petition For Allowance of Appeal.

Petitioner failed to follow the appellate procedure rules, with the Pennsylvania Supreme Court for allowance of appeal from a per curiam order of the Superior Court. Accordingly, his petition for allowance of appeal was denied. Pet. App. E-1

Pennsylvania Rule of Appellate Procedure 1115(d) provides as follows:

> **Essential Requisites of Petition.** The failure of a petition to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

This rule is patterned after U.S. Supreme Court Rule 13, which places the burden on the petitioner to prepare a succinct and coherent presentation of the case and the reasons in support of allowance of appeal. Clearly, appellate courts

cannot function without presentation of a concise and well-reasoned argument. Nowhere in Petitioner's filing with this court, does he set forth in what way the Superior Court abused its discretion in finding that he had failed to conform to Pa.R.C.P. 1115(d).

Plaintiff's failure to set forth the essential requisites of the petition as required by Pennsylvania Rule of Appellate procedure 1115(d), was further confirmed when the Supreme Court denied the Petitioner's Motion for Reconsideration by court order dated 10 March 1999. Pet. App. F-1

B. Even on the merits, Petitioner has failed to set forth an issue that warrants review by this court.

As indicated in the rules of the Supreme Court, writ of certiorari will be granted only for compelling reasons. The original Court of Common Pleas decision on which Petitioner's multiple appeals have been based, was the Court's decision that plaintiff had waived his right to jury trial, by not entering his demand for jury trial within twenty days of the filing of the last pleading. This was the court order and opinion on which plaintiff's appeal to Superior Court was based and ultimately is the only underlying issue. All other issues raised by Petitioner in his Petition for Writ of Certiorari were not presented by timely appeal.

Pa.R.C.P. 1007.1(a) provides:

> (a) In an action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for jury trial

> not later than twenty (20) days after the service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by separate writing.

Pro se Petitioner asserts that he made demand for jury trial by motion dated 7-21-97. He claims that this was within twenty (20) days of the filing of Plaintiff's Reply To Defendants' Motion To Strike. He further claims that this satisfies the requirement of Pa.R.C.P. 1007.1(a).

As indicated, it is clear that Petitioner misconstrues the meaning of the term **pleading.** Plaintiff's Reply To Defendants' Motion To Strike is not a pleading as defined by the Pennsylvania Rules of Civil Procedure. Pa.R.C.P. 1017.1(a) defines pleadings as follows:

> (a) Except as provided by Rule 1041.1, the pleadings in action are limited to a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to an counerclaim contains new matter, a preliminary objection and an answer thereto.

As a motion to strike does not fit this definition, Petitioner failed to timely demand jury trial.

REASONS FOR DENYING THE WRIT

The Petitioner claims that the Pennsylvania Supreme Court erred or abused its discretion in denying the Petition For Allowance of Appeal does not warrant review by this court. The decision below was correct and appropriate and within the soul discretion of Pennsylvania's highest court.

The Petitioner does not indicate in what way the Pennsylvania Superior Court abused its discretion, when it found that the Petition For Allowance of Appeal did not present with accuracy, brevity, and clearness whatever was essential to a ready and adequate understanding of the points required for consideration. Certainly, this is within the soul discretion of the Pennsylvania Superior Court and such discretion is necessary to the operation of that court.

This court does not grant certiorari as of right, but only for compelling reason. There are no issue raised by the Petitioner that satisfy the United States Supreme Court Rule 10. There are no federal issues by the decision of the Pennsylvania Superior Court.

The underlying factual error raised by the Petitioner concerns a decision of the Court of Common Pleas of Delaware County, where the court found that the Petitioner had failed to timely demand a jury trial, as is required by the applicable Pennsylvania Rules of Civil Procedure. As stated in the Rule 10 of the Rules of the Supreme Court of the United States, a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Finally, pro se Petitioner, Ralph Douros, has filed this petition on his own behalf and on behalf of Margaret D. Douros. Pro se Petitioner can not represent anyone other than himself, as such would constitute the unauthorized practice of law.

CONCLUSION

For the reasons stated above, the petition should be denied.

July 22, 1999

Respectfully submitted,
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